

Date: October 2, 2000

AR 63

Subject: Administration of Community Development  
Block Grant Program

Supersedes: AR 63  
April 25, 1983

### Purpose

The purpose of this Administrative Regulation is to:

1. assign administrative and operating responsibility for implementing the Community Development Block Grant (CDBG) program;
2. assign responsibility for determining project eligibility and income eligibility guidelines applicable to use of CDBG funds;
3. establish guidelines and assign compliance responsibilities for implementing City policy regarding Minority Business Enterprise (MBE) on CDBG assisted construction projects over \$10,000;
4. assign responsibilities for Federal Labor Standards compliance;
5. outline Section 3 and other additional requirements pertaining to the CDBG program.

### Administration of Projects

#### Responsibilities

The Department of Finance is responsible for administrative execution of all CDBG projects, including implementation, monitoring and project evaluation.

The Planning Department is responsible for environmental assessment of all approved CDBG projects in accordance with federal regulations.

#### Procedures

Projects will be implemented through contracts with non-City agencies or memoranda of understanding with operating City departments. Each such contract or memorandum will set forth, in detail, the objective(s) and scope of the project, criteria for evaluation, and a timetable for implementation and project completion. In addition, each contract or memorandum of understanding will include a budget within which the agency or department shall implement the project.

To enable the Controller's Office to fulfill its monitoring responsibilities, operating agencies and City departments may be required to submit periodic progress reports as stipulated in the implementing agreement, or as otherwise needed.

The City Manager will issue directives as are deemed necessary to expedite completion of projects. The Controller's Office is responsible for periodic financial audits of ongoing projects and final financial audit upon completion. Monitoring reviews will also be made periodically by the Controller's Office.

As projects are completed or the Memorandum of Agreement/Contract expires, budgets will be closed. All unexpended funds and all program income will be reprogrammed in accordance with CDBG regulations and City of Wichita policies.

#### Compliance With Federal, State and Local Requirements

In the implementation of all CDBG projects and other HUD-funded projects (such as HOME), the operating department or agency shall assume full responsibility for compliance with all applicable federal, state and local laws which pertain to the project, including, but not limited to the following:

- (1) Project Eligibility Under CDBG Regulations. The Controller's Office will determine whether a project meets eligibility criteria. The administering organization is responsible for ensuring expenditures comply with CDBG regulations. The Controller's Office will provide assistance in determining eligibility of expenditures. (See Attachment A)
- (2) Income Eligibility. All direct services provided under the CDBG program shall be based upon income criteria unless otherwise specified in the implementing contract or memorandum of understanding. Eligibility certification for participation in CDBG programs shall be based on family size and documentation of total income. Income of beneficiaries shall be determined and certified as stipulated in the implementing agreement. Eligibility determinations shall be made based on income criteria outlined in Attachment A of this AR. Agencies and departments may advise individuals as to their eligibility under these guidelines based on certification of income.
- (3) Equal Opportunity. Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, and Executive Orders 11246, 11375, 11131; Part 60 of Title of the Code of Federal Regulations; The Age Discrimination in Employment Act of 1967; The Equal Employment Opportunity of 1972; the American Disabilities Act of 1990 and the Kansas Act Against Discrimination, and Section 2.12.900 et. seq. of the Code of the City of Wichita, Kansas as amended, which prohibit discrimination on the basis of race, color, religion, sex, disability, Vietnam Veteran or national origin or ancestry. The Personnel Division will be responsible for EEO programs internal to the City and the Purchasing Division will be responsible for outside agency contracts.
- (4) Section 3 Section 3 of the Housing and Urban Development Act of 1974 requiring the employment of low-income persons and the utilization of Section 3 businesses. Attachment B of this AR specifies the responsibilities and procedures for compliance with Section 3. Operating departments and agencies will be responsible for compliance. The Personnel Director will be responsible for Section 3 eligibility determinations for the City. Departments are advised that Section 3 requirements apply to all grants received from the U.S. Department of Housing and Urban Development, not just CDBG grants. All contracts and subcontracts for supplies or services funded with HUD funds must contain the Section 3 Clause in its entirety.

- (5) Minority Business Enterprise (MBE) Participation. Ten percent (10%) of all CDBG expenditures, including administration, will be used for MBE participation on construction projects involving CDBG funds in excess of \$10,000. Guidelines for MBE participation are delineated in Attachment C. City departments and non-City agencies receiving CDBG funds are responsible for compliance with these provisions.
- (6) Federal Labor Standards Compliance. In all construction projects over \$2,000 (all funds) the administering organization shall comply with the Davis-Bacon Act, the Copeland ("Anti-Kickback") Act, the Contract Work Hours and Safety Standards Act, and the regulations issued pursuant thereto. These requirements apply to all project funds regardless of funding source. Under residential construction, Federal Labor Standards requirements apply to residential construction only if such property is designated for use by eight or more families (CDBG) or eleven units (HOME). Guidelines are listed in Attachment D of this AR.
- (7) Drug-Free Workplace. The Drug-Free Workplace Act of 1988 which requires contractors and grantees of Federal agencies to certify they will provide drug-free workplaces. Operating departments and agencies will be responsible for compliance.

Chris Cherches  
City Manager

Attachment A of AR 63

Project and Income Eligibility Determinations

The administering organization shall assume full responsibility for compliance with all federal, state and local requirements which pertain to the program, including, but not limited to the following:

- A. Project Eligibility Determinations. The Controller's Office will determine whether a project meets eligibility criteria. The administering organization is responsible for ensuring expenditures comply with CDBG regulations. The Controller's Office will assist in determining eligibility of expenditures.
- B. Income Eligibility. All direct services provided under the CDBG program shall be based upon income criteria unless otherwise specified in the implementing contract or memorandum of understanding. Eligibility certification for participation in CDBG programs shall be based on family size and documentation of total income. Income of beneficiaries shall be determined and certified as stipulated in the implementing agreement. Eligibility determinations shall be made based on income criteria outlined in this AR. Agencies and departments may advise individuals as to their eligibility under these guidelines based on certification of income.

Individual and Family Income Eligibility Guidelines

To ensure the City is consistent in determining eligibility for individual programs, the U.S. Census Bureau definition of income will be used and a income guideline formula as developed in accordance with HUD guidelines will be followed.

Operating departments or agencies will be responsible for determination of eligibility based on any other criteria applicable to the program. Generally these programs will require a determination of eligibility as to: 30% of median; "very-low income" or "low-income".

"Very-Low Income" is defined as an individual or family whose total income is less than 50% of the median income for the Wichita Metropolitan Statistical Area (MSA) based on family size.

"Low-Income" is defined as an individual or family whose total income is less than 80% of the median income for the Wichita MSA based on family size.

C. U.S. Census Bureau Definition of Income

Total income is the sum of amounts received for wage and salary income, self-employment income, and income other than earnings.

Wage or salary income is defined as the total money earnings received for work performed as an employee. It represents the amount received before deductions for personal income taxes, Social Security, bond purchases, union dues, etc.

Self-employment income is defined as net money income (gross receipts minus operating expenses) from a business, farm or professional enterprise in which the person was engaged, subdivided into farm and non-farm self-employment income.

Earnings are the sum of wage or salary income and self-employment income.

Income other than earnings includes money income received from such sources as interest dividends, net rental income, Social Security benefits, pensions, veteran's payments, unemployment insurance and public assistance or other governmental payments and periodic receipts from insurance policies to annuities.

Not included as income is money received from the sale of property (unless the recipient was engaged in the business of selling property), the value of income "in kind," withdrawals of bank deposits, money borrowed, tax refunds and gifts and lump sum inheritances or insurance payments.

Current income guidelines will be provided to operating departments and agencies by the Controller's Office. The Controller's Office shall be responsible for periodic review of income guidelines and revisions when appropriate.

Attachment B of AR 63

Compliance with Section 3 of the  
Housing and Urban Development Act of 1968

General

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work on the project be awarded to eligible business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

This requirement of Section 3 does not set aside or supersede the requirements of State law relative to bidding where such are applicable.

Purpose

The purpose of this Attachment is to prescribe the policies and procedures for implementation of Section 3 requirements.

Applicability

Section 3 requirements will affect employment, training, and purchasing policies of the City with regard to the expenditure of funds from grants awarded to the City by the Department of Housing and Urban Development or other Federal agencies applying the same requirements.

Definitions

1. Low-income resident -- Any individual who resides within the area of a Section (3) covered project and whose family income does exceed 80 percent of the median income of the Metropolitan Statistical Area (MSA) in which the Section 3 covered project is located.
2. Family income -- All income received by members of a family residing in a household from all sources for the calendar year prior to application for employment. Family status at time of employment will be used to determine family income. The calculation of family income shall provide for changes in family status by reducing from family income the amount of income earned by a family member which for various reasons may no longer be a member of the family and be increasing family income by the amount of income earned by an added member of a family.
3. Project Area -- For HUD grants to the City, the project area means that area within the City limits of the City of Wichita. For HUD grants to a City-County operation, project area means that area within the County limits of Sedgwick County including the City of Wichita.
4. Contractor -- Any entity, whether a business or person, which enters into a contract or agreement directly with the City of Wichita to perform work, provide services, supplies or equipment in connection with a Section 3 covered project.

5. Subcontractor -- Any entity, whether a business or a person, which enters into a contract or agreement with a contractor awarded a contract or agreement in connection with a Section 3 project.
6. Vendor/Supplier -- Any entity, whether a business or a person, which enters into an agreement with or is awarded a purchase order by the City, or a Section 3 contractor or subcontractor, to provide supplies, or equipment in connection with a Section 3 covered project.

#### Employment Procedures

1. The Personnel Division will recruit low-income residents from the project areas through: advertising, signs placed at appropriate places, and through community organizations within the project area, such as Kansas State Employment Service; SER-Jobs for Progress; Urban League; etc.
2. The Personnel Division will send a notice to each labor organization or representative of workers with which the City has a collective bargaining unit agreement or other contract or understanding advising them of the City's commitment under this Regulation and shall post copies of this commitment in conspicuous places available to employees and applicants for employment.
3. Each applicant for employment with the City of Wichita for a position funded under Section 3 will be required to certify to the City Personnel Office: (a) residence address, (b) the number and ages of the persons residing as members of the family, and (c) the gross income received by all members of the family.
4. The Personnel Division will determine whether the applicant is a low-income resident on the basis of information provided.
5. The Personnel Division will maintain a list of all low-income residents who have applied for employment in a position funded under Section 3 and employ such persons if otherwise eligible or if a training vacancy exists.

#### Utilization of Low-Income Area Residents as Employees

City departments administering contracts to which Section 3 requirements apply will ensure those requirements are met.

The Department of Finance is assigned the responsibility to ensure that all City departments undertaking work in connection with a Section 3 covered project fulfill the obligation to utilize lower income area residents as employees to the greatest extent feasible by insuring that such departments:

1. Identify the number of positions in the various occupational categories including skilled, semiskilled, and unskilled labor, needed to perform each phase of the Section 3 covered project.
2. Identify the number of positions described in (1) above which are currently filled by regular, permanent employees.
3. Identify those positions described in (1) above which are not currently occupied by regular, permanent employees.

4. Establishing, within the positions identified in (3) above, goals which are consistent within each occupational category for the number of positions to be filled by lower income residents of the Section 3 covered project area.
5. Make a good faith effort to fill all of the positions identified in (4) above with lower income residents of the project area.
6. Establish and budget for apprentice or training positions to the greatest extent feasible which will be identified by the departments and make a good faith effort to fill these apprentice and training positions with lower income residents of the project area.
7. The requirements (1) through (6) above are in addition to the City of Wichita's Equal Opportunity and Affirmative Action Program for employment practices and the City policies and procedures related thereto.

Utilization of Business Located in or Owned in Substantial Part by Persons Residing in the Area

The Department of Finance through its Purchasing Division has the responsibility to assure that to the greatest extent feasible, contracts for work under a Section 3 project are awarded to business concerns located within, or are 51% owned by persons residing in, the Section 3 covered project area or owned by persons considered by the Small Business Administration (SBA) to be socially or economically disadvantaged and listed on the SBA registry of eligible business concerns. On advice of the Purchasing Division, the City will follow a "common sense" approach in determining whether a Section 3 submittal is required for purchases made with U.S. Department of Housing and Urban Development funds.

In general terms, the criteria are that a submittal is required if there is a significant opportunity for training or employment for low-income persons as a result of the contract. This generally parallels the City's policy of \$5,000 or 4 or more employees used as a basis for requiring equal employment opportunity submittals. Procedures for implementation are as follows:

1. The invitation for bids shall be sent to all relevant firms on the SBA registry and shall advise prospective contractors of the requirements of Section 3 regulations.
2. Pursuant to negotiations of a contract for professional services, prospective contractors shall be advised of the requirements of the Section 3 regulations by the contracting agency.
3. Every contractor performing work in connection with a Section 3 covered project shall provide, prior to the signing of a contract, a preliminary statement of work force needs and utilization (Skilled, semiskilled, and unskilled, and trainees by category.) This statement of needs and utilization will be reviewed by the Purchasing Division and a copy forwarded to the Controller's Office.
4. Incorporate or cause to be incorporated in all contracts or subcontracts for work in connection with a Section 3 project, the Section 3 clause. (Attachment B1)
5. The requirements of (1) through (4) above are in addition to the Equal Opportunity Affirmative Action Program requirements established by the City Council.



Attachment B1 of AR 63

Section 3 Clause

EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND  
LOWER INCOME PERSONS IN CONNECTION WITH  
ASSISTED PROJECTS.

- A. General. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including community development block grants under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities and new community developments.
- B. Assurance of Compliance.
1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 to business concerns which are located in or owned in substantial part by persons residing in the area of the project.
  2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
  3. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
  4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulation.

5. Compliance with the provisions of 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.
6. The contractor will certify that any vacant employment positions, including training positions, that are filled after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135. (1)
7. Noncompliance with HUD's regulations at 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
8. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires to the greatest extent feasible (I) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Attachment C of AR 63

Minority Business Enterprise (MBE) Participation

- A. Ten percent (10%) of all CDBG expenditures, including administration, will be used for MBE participation on construction projects involving CDBG funds in excess of \$10,000. Bid specifications must include the minimum required dollar value of MBE participation (**do not list 10%**).
- B. Construction projects under this regulation may be awarded to a general contractor as a total package or may be phased (several contracts for various aspects of the construction) by the administering organization or department. Force account labor on CDBG funded projects will be at the discretion of the City Manager.
- C. On those projects to be awarded in one total contract, the administering organization or department will ensure that the contract requires the minimum dollar value of MBE participation to meet these requirements accounting for any administrative costs, architectural fees, engineering, etc., where there is no MBE participation.
- D. On those projects to be phased, some contracts may be awarded for less than 10% MBE participation as long as MBE participation is 10% of the total project grant. For projects to be phased, a written plan must be developed by the administering organization. This plan must contain, at a minimum, each phase of the project (work to be performed), projected dollar amount of the contract for each phase, planned total dollar amount and percentage of MBE participation on each phase, approximate schedule of each phase contract award, and planned total dollar amount and MBE percentage in the project.
- E. Each contractor claiming to be a bona fide MBE must be certified by the Purchasing Division as to ownership and type of services to be provided. This certification will be accepted unless challenged. Challenges regarding status as an MBE will be investigated by the Purchasing Division which will report its findings to the City Council through the City Manager's Office. Final determination of MBE status will be by the City Council.

F. Responsibilities

- 1. Controller's Office shall furnish all applicable guidelines to administering organizations.
- 2. Purchasing shall develop forms for MBE certification and provide to contractors and suppliers seeking certification as a bona fide MBE.
- 3. Purchasing shall develop, and maintain, a list of certified MBEs in the Wichita market area and furnish to administering agencies and prime contractors.
- 4. Administering Organization shall assist prime contractors in seeking available, qualified MBEs and provide technical assistance to MBEs and prime contractors as needed to assist MBEs with less experience than non-minority businesses to be used on the project.
- 5. Administering Organization shall develop a written plan for projects to be phased, and submit plan to City Manager for approval.

6. Administering Organization shall develop bid specifications for projects according to all federal, state and local requirements, including the minimum dollar amount of the MBE participation requirement.
7. Purchasing, Administering Organization and Controller's Office shall review bid specifications prior to advertising to ensure all required specifications (including the dollar amount, not ten percent, of MBE participation) are included.
8. Purchasing and Administering Organization shall notify all certified MBEs directly of all CDBG funded projects to be bid.
9. Purchasing and Administering Organization shall establish a pre-bid conference on each project to explain, at a minimum, the dollar amount(s) of MBE participation requirements for each contract.
10. Administering Organization shall require all prime contractors in their bid submittals to itemize the names of pre-certified MBEs to be used, work to be performed by each, and the amount of contract funds to be paid to each. MBEs must be pre-certified to be eligible.
11. Administering Organization shall provide report on bids received and proposed awards to Controller's Office and Purchasing regarding MBE participation on proposed contract awards.
12. Purchasing and Administering Organization shall ensure the MBE has executed a binding contract to provide a specific service or material to a project for a specific dollar amount prior to approval of the general contract.
13. Administering Organization shall monitor progress of contractors with each payment request to ensure the MBE participation requirements are being met, and either authorize or withhold payments as necessary to ensure compliance.
14. Administering Organization shall, prior to authorizing final payment, obtain joint written assurance from contractor and MBEs that payment of the required participation amount was made. Submit copy of confirmation to Controller's Office to authorize final payment.
15. Administering Organization shall receive challenges regarding MBE status and investigate. Submit findings and recommendations to City Council through the City Manager within 30 days.
16. City Council shall determine minority business enterprise status on challenges.
17. City Council shall approve/disapprove waiver requests.

G. Waivers

A request for a waiver of the 10% MBE participation requirement must be submitted to the City Council via the City Manager. The waiver request will address, at a minimum, the following:

1. demonstrate there is not sufficient qualified MBEs in the market area;

2. include a detailed description of the efforts made by the administering agency and potential contractors to locate and enlist qualified MBEs;
3. list each qualified MBE contacted and the reason not used;
4. other pertinent information.

No requests for waivers will be received prior to bid opening. Bids received without meeting the MBE participation requirements will be rejected as being non-responsive and the contract will be awarded to the next lowest and best bid meeting specifications and within the estimate.

Definitions:

Minority Group Member or "Minority" means a citizen of the United States who falls into one the following race/ethnic categories:

- a. Black (not of Hispanic origin): Means all persons having origins in any of racial groups in Africa.
- b. Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin.
- c. Asian or Pacific Islander: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippines and Samoa.
- d. American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America, who maintain cultural identification through tribal affiliation or Indian Community recognition.

"Minority Business Enterprise" means a business at least fifty percent (50%) of which is owned by minority group members or, in the case of a publicly owned business, at least fifty-one percent (51%) of the stock is owned by minority group members.

"Qualified Minority Business" means an MBE capable of performing the services or supplying the materials that are needed, included appropriate licenses where required.

"Available Minority Business Enterprise" means an MBE whose market area includes the geographic location of the project and who can perform the project services or supply the project materials at the time they are needed.

Attachment D of AR 63

Federal Labor Standards Compliance.

In all construction projects over \$2,000 (all funds) the administering organization shall comply with the Davis-Bacon Act, the Copeland ("Anti-Kickback") Act, the Contract Work Hours and Safety Standards Act, and the regulations issued pursuant thereto. For residential construction, this requirement applies to residential construction only if such property is designated for use by eight or more families (CDBG) or eleven units (HOME).

Responsibilities

1. The Director of Finance, through the Controller's Office, shall be responsible for the following:
  - a. Act on behalf of the City of Wichita to ensure compliance with all applicable labor standards requirements and act as liaison with HUD.
  - b. Obtain from HUD the appropriate wage determination and provide to the administering organization.
  - c. Conduct that portion of pre-bid and pre-construction conferences during which all available contractors and subcontractors will be apprised of their responsibilities and obligations regarding MBE and labor standards requirements.
  - d. Maintain a "labor standards" file for each project.
  - e. Submit "start of construction" notice to HUD.
  - f. Review weekly payrolls for compliance with wage determination. Conduct on site employee interviews to verify payroll information.
  - g. In coordination with the Controller's Office, Purchasing and Treasury Divisions, correct violations through withholding moneys to compensate employees as required.
  - h. Submit "Labor Standards Enforcement Request" to HUD upon project completion.
2. The Administering Organization shall:
  - a. Request applicable wage determination from Controller's Office;
  - b. Include wage determination and all other labor standards requirements in bid specifications, contracts and subcontracts;
  - c. Convene pre-bid conference to discuss specifications, EEO, MBE participation and labor standards requirements;
  - d. Convene pre-construction conference with contractors and sub-contractors;
  - e. Notify the Controller's Office at the time notice to proceed is given the contractor.